

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

THOMAS BROWN,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE No. 1:23-cv-1250

HON. ROBERT J. JONKER

**ORDER APPROVING AND ADOPTING  
REPORT AND RECOMMENDATION**

The Court has reviewed Magistrate Judge Green’s Report and Recommendation in this matter (ECF No. 13) and Plaintiff’s Objections to it (ECF No. 14). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . as a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 451 (3d ed. 2014). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

The Magistrate Judge recommends affirming the Commissioner’s decision because the ALJ’s conclusions are supported by substantial evidence. The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself;

and Plaintiff's Objections to it. After its review, the Court finds the Magistrate Judge's Report and Recommendation to be factually sound and legally supported.

Plaintiff asserts that he lost his ability to work because of a disabling condition on November 1, 2020, but the Administrative Law Judge ("ALJ") concluded that Plaintiff did not qualify for disability benefits because there existed sufficient jobs in the national economy that an individual with Plaintiff's Residual Functional Capacity ("RFC") could perform. (ECF No. 6-2, PageID.34–35). Plaintiff argues on appeal that the ALJ failed to account for all of Plaintiff's limitations and improperly inserted his own lay medical opinion. (ECF No. 10 at 11).<sup>1</sup> Magistrate Judge Green recommends that the Court reject Plaintiff's claims, and the Court agrees, finding each of the ALJ's findings supported by substantial evidence. For example, Plaintiff objects that the ALJ did not account for the restricted movement in his right shoulder. But Plaintiff points only to lumbar spine examinations as evidence of his shoulder injury. (See ECF No. 14, PageID.704–05). The right shoulder injury is, of course, entirely different from the lumbar spine impairments on which Plaintiff relies. Plaintiff's objection, therefore, does not alter the ALJ's well-founded conclusion that Plaintiff's right shoulder testimony is not substantiated by the evidence. The Magistrate Judge was right to reject this argument.

Plaintiff further objects that the ALJ failed to properly consider his subjective testimony. But, as the Magistrate Judge correctly points out, the ALJ affirmatively discussed why Plaintiff's symptoms were not consistent with or supported by the evidence. (See ECF No. 6-2, PageID.32–33). The ALJ carefully compared Plaintiff's subjective symptoms against his medical records,

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<sup>1</sup> The Court adopts the Magistrate Judge's pincite convention because Plaintiff's briefs do not include PageID numbers.

looking to Plaintiff's own reports of improved and remediable pain and physical examination findings to conclude that the record contradicts Plaintiff's testimony. (*Id.*). The Magistrate Judge appropriately addressed all of this in his Report and Recommendation. (ECF No. 13, PageID.701–02). Again, the Court agrees with the Magistrate Judge's conclusion.

**ACCORDINGLY, IT IS ORDERED:**

1. The Report and Recommendation of the Magistrate Judge, (ECF No. 13), is **APPROVED** and **ADOPTED** as the opinion of this Court.
2. Defendant Commissioner of Social Security's decision, (ECF No. 6-2, PageID.28–35, 55–89), is **AFFIRMED**.
3. The matter is **DISMISSED**.

**IT IS SO ORDERED.**

Dated: December 4, 2024

/s/ Robert J. Jonker  
ROBERT J. JONKER  
UNITED STATES DISTRICT JUDGE